

**Voting Requirements for Benefit Plans Implemented After a Minority Stock Issuance in a Mutual Holding Company Structure**

**Summary Conclusion:** Under 12 C.F.R. 575.7(b)(1), the requirements contained in subsection 563b.500(a) apply to proposed management and employee stock benefit plans that are to be implemented by subsidiary holding companies in a mutual holding company structure, regardless of the length of time that has elapsed after an initial public offering. However, OTS is willing to consider, on a case by case basis, requests for partial waivers of the 12 C.F.R. 563b.500(a)(7) voting requirement pertaining to minority shareholders in mutual holding company structures to permit plans to be approved by a majority of the minority shares present and voting on the plan.

**Date:** September 17, 2004

**Subjects:** Savings and Loan Holding Companies/Change in Control

P-2004-6



Office of Thrift Supervision  
Department of the Treasury

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September 17, 2004

[ ]

Re: Voting Requirements for Benefit Plans Implemented After a  
Minority Stock Issuance in a Mutual Holding Company Structure

Dear [ ]:

This letter responds to your inquiry on behalf of [ ]  
[Mid-tier), the sole stockholder of [ ]  
(Savings Association), a [ ] chartered savings association that reorganized into a  
mutual holding company structure effective [ ] and contemporaneously engaged in a  
minority stock issuance. The majority stockholder of the Mid-tier is

Specifically, the Mid-tier has requested that the Office of Thrift Supervision (OTS) opine as to whether the voting requirements contained in 12 C.F.R. § 563b.500(a)(7) apply to management and employee stock benefit plans implemented more than one year after a subsidiary holding company conducts an initial public offering of stock. In brief, we conclude that, by virtue of 12 C.F.R. § 575.7(b)(1), the voting requirements contained in subsection 563b.500(a)(7) apply to proposed management and employee stock benefit plans that are to be implemented by subsidiary holding companies in a mutual holding company structure, regardless of the length of time that has elapsed after a public offering. However, OTS is prepared to consider, on a case by case basis, requests for partial waivers of the 12 C.F.R. § 563b.500(a)(7) voting requirement pertaining to minority shareholders in mutual holding company structures to permit plans to be approved by a majority of the minority shares present and voting on the plan.

Section 575.7 of OTS's mutual holding company regulations governs issuances of stock by savings association subsidiaries of mutual holding companies. Subsection 575.7(a) provides that such savings associations may not issue stock to persons other than their respective mutual holding companies unless OTS gives the association approval in advance of the stock issuance. Subsection 575.7(b)(1) states:

All of the provisions of part 563b of this chapter shall apply to a stock issuance applied for pursuant to this section, unless otherwise provided for in this part [575] or clearly inapplicable, as determined by the OTS. For purposes of this paragraph (b)(1), the term *conversion* as it appears in the provisions of part 563b of this chapter shall be deemed to refer to *the stock issuance*, and the term *converted* or *converting savings association* shall be deemed to refer to the savings association undertaking the stock issuance.

Moreover, 12 C.F.R. § 575.14(b) provides that, for purposes of section 575.7 of OTS's regulations, a mid-tier holding company in a mutual holding company structure is treated as a savings association issuing stock and is subject to the same requirements under section 575.7. See also, 12 C.F.R. § 575.7(e).

Thus, reading the provisions of sections 563b.500, 575.7 and 575.14 together, each issuance of stock by a mid-tier holding company or savings association in a mutual holding company structure constitutes a distinct "conversion" for purposes of determining the periods governing approvals of management and employee benefit plans under section 563b.500. Significantly, the issuance of shares pursuant to a stock benefit plan itself is a "conversion" for purposes of the section 563b.500 requirement.<sup>1</sup> Accordingly, subsection 563b.500(a)(7) requires that the shareholders of a mid-tier holding company approve each management or employee benefit plan by a majority of the total votes eligible to be cast and by the majority of the total votes eligible to be cast, other than those of the parent mutual holding company.

Section 563b.500(a)(7)'s general requirement of approval of a plan by the majority of the votes eligible to be cast is consistent both with the charter-based approval requirements for stock issuances to insiders of federal stock savings associations<sup>2</sup> and for stock issuances to insiders of federal mid-tier mutual holding companies.<sup>3</sup> Significantly, however, the model charter for federal mid-tier mutual holding companies does not require, in addition, the vote of a majority of the outstanding minority shares. Furthermore, in other contexts, which may have significant ramifications to minority shareholders' interests, the model charter for federal mid-tier mutual holding companies does not require a vote of the majority of the minority shares in order to amend the charter.<sup>4</sup> Even though it otherwise exceeds the general charter requirements, requiring approval by a majority of the minority shares prevents the mutual holding company from

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<sup>1</sup> OTS has routinely required MHC-2 filings in connection with stock issuances for benefit plans. The only exception to the requirement of filing a separate MHC-2 application has been where the plans have been addressed in a minority stock offering application that contemplated the issuance of shares in accordance with the mutual-to-stock conversion priorities. In such situations, in our view, it is clear, notwithstanding the lack of a separate application, that issuances pursuant to plans are "stock issuances."

<sup>2</sup> See, section 5 of the model federal stock savings association charter, 12 C.F.R. § 552.3 (2004).

<sup>3</sup> See, section 5 of the model federal mid-tier mutual holding company charter, 12 C.F.R. § 575.14(c)(1) (2004).

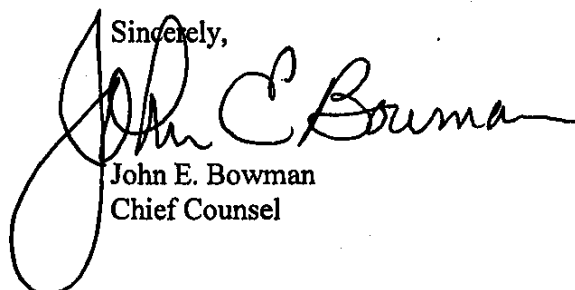
<sup>4</sup> See, section 8 of the model federal mid-tier mutual holding company charter, 12 C.F.R. § 575.14(c)(1) (2004).

controlling the outcome of every such vote.<sup>5</sup> Nevertheless, the requirement that the majority of the minority be of the total minority votes eligible to be cast as opposed to those actually cast is not needed to prevent the parent mutual holding company from controlling the outcome of every vote. Given that the requirement for affirmation by the majority of eligible votes exceeds the requirements in the model charter and is not generally necessary to prevent the mutual holding company or the insiders who determine the way the mutual holding company votes its shares from controlling the outcome of each vote, OTS is willing to consider, on a case by case basis, requests for a waiver of that provision.

In reaching the foregoing conclusions, we have relied on the factual representations made in the material you submitted to us. Our conclusions depend in part on the accuracy and completeness of those facts. Any material difference in facts or circumstances from those described herein could result in different conclusions.

If you have questions regarding these matters, please feel free to contact Aaron B. Kahn, Special Counsel, at (202) 906-6263.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Bowman". The signature is written in a cursive style with a large, looping initial "J".

John E. Bowman  
Chief Counsel

cc: All Regional Directors  
All Regional Counsel

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<sup>5</sup> A parent mutual holding company is required to maintain ownership of more than 50% of the stock in any subsidiary holding company. See, 12 C.F.R. § 575.7(a)(5) (2004).